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# SYMPOSIUM ON THE INTERNATIONAL PROTECTION OF GEOGRAPHICAL INDICATIONS

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## PROTECTION OF GEOGRAPHICAL INDICATIONS IN LATIN AMERICA

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## INTRODUCTION

Contrary to other aspects of industrial property, geographical indications are a controversial institution and are particularly complex. Although in the field of patents and marks, the basic concepts of protection are virtually the same in all countries of the world, there is no uniform approach to the protection of geographical indications. Bearing in mind that in all industrial property rights the spatial sphere is of fundamental importance, in the case of geographical indications geographical location becomes especially relevant, not only

from the time the right is established but also through its exercise and in relation to its observance, which will always require express recognition on the part of the State.

This is due to the fact that the system of protection in each country must take account of the specific needs relating to the products for which the geographical indication is used. Thus, whereas in some countries protection is granted by means of geographical indications for viticultural and agricultural products, in others the economic interest of certain products has led to protection being given to non-agricultural products such as mineral waters, beers, porcelains and semi-precious stones.

From the commercial point of view, geographical indications are distinctive signs of "added value", in so far as they provide a stable and particular level of quality, and endow the product with which they are linked with a number of qualitative features, as a result of which the product is accepted and distinguished by consumers in international markets.

Geographical indications are among the industrial property subjects that are protected and therefore, in the same way as marks, the principles of specialty and territoriality are applied to them, i.e. they are protected only for the type of products that are used in a particular territory. Notwithstanding, their territorial scope can be expanded through bilateral or multilateral agreements.

Although traditionally appellations of origin and indications of source have followed separate paths, with the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) the definition of a geographical indication was adopted, which, although comprising both terms, still gives rise to certain differences.

Although the TRIPS Agreement is the multilateral instrument with the greatest scope, and affords the broadest and most specific form of protection to geographical indications, its applicability depends on the legal means provided by member countries in their legislation, for which reason such means may comprise systems with different levels of formality.

## SITUATION IN LATIN AMERICA

The protection of geographical indications is characterized by the existence of different legal concepts formulated by States, based on their varying legal, historical and economic conditions.

As a general rule, it can be said that industrial property laws define the appellation of origin, be it on the basis of the definition of appellation of origin contained in the Lisbon Agreement or a definition extended to geographical indications, as specified in Article 22.1 of the TRIPS Agreement.

The different framework legislations include a prohibition to register as marks appellations of origin and indications of source, without prejudice to the fact that those geographical names that are original and distinctive, and do not cause confusion or errors as regards the origin, source, qualities or features of the product to which they apply, may constitute marks.

It should be considered that geographical names have always taken their place among man's desires as an element that individualizes the products manufactured or created and, in that sense, are used in most framework laws as distinctive signs that distinguish the products or services of one company from those of other companies.

Legislation in various Latin American countries comprises a fairly well-structured system of protection for geographical indications and establishes, in industrial property offices, the register of domestic and foreign appellations of origin, thereby creating an administrative procedure similar to that of marks, whereby the competent authority grants appellations of origin and sets the characteristics which the product must possess so that it can be distinguished by means of its appellation.

The Uruguayan Law forms part of this system of protection. An application for the registration of an appellation of origin in our country is filed with the National Industrial Property Directorate by the interested parties, whose institution is in the region or locality to which the use of the appellation of origin corresponds, or at the request of a particular competent authority, which has a legitimate interest and is established in the individual territory.

When an application is made for the registration of a Uruguayan appellation of origin, proof must be attached confirming that the appellation has been granted by the competent authority in that area.

In relation to national wine making, the proof referred to must be provided by the National Institute of Winemaking. Similarly, foreign producers, manufacturers, craftsmen or service providers, as well as competent public authorities from foreign countries, may register the appellations of origin that correspond to them, in accordance with the international treaties to which Uruguay has acceded, and whereby recognition is granted in the country of origin when the application is made.

Once an application for registration of an appellation of origin has been published, objections may be raised by those who have a legitimate interest, those objections are recorded and, where they occur since the application does not comply with the legal provisions, they are forwarded to the applicant and the Industrial Property Office settles the matter.

In our country, the National Viticultural Institute (INAVI) is the body specializing in wine-related matters and verifies, at an internal level, compliance with the technical and legal requirements granting access for certain producers to protection for a geographical indication and, in addition, for those products which they endeavor to market in the country the accuracy of the indications and appellations of origin appearing on their labels is verified, thereby guaranteeing fair competition and consumer protection.

Mexican legislation makes a different provision whereby, through the establishment of a definition of the appellation of origin based on the Lisbon Agreement, protection is granted in the form of a declaration issued for that purpose by the Mexican Industrial Property Institute (IMPI). Protection is declared in the form of an administrative act, immediately following a procedure where documents, supplied by natural persons or legal entities demonstrating that they have a legal interest in the matter, are examined.

As a consequence of administrative procedure, the protected appellation is recognized and the links between appellation, product and territory are established. The legal protection regime in question is complemented by the authorization to use a protected appellation of origin granted by the IMPI to those who meet the relevant requirements, taking into consideration that the State of Mexico is the owner of the appellation of origin.

In Decision 486, the Andean Community establishes a system where the application for the declaration of protection for an appellation of origin is made to the competent national office which, in turn, may grant corresponding authorizations for use.

Similarly, competent national offices may recognize the appellations of origin protected in another member country, when the application is filed by those who have a legitimate interest and the application has been declared as such in its country of origin. As regards appellations of origin or geographical indications protected in third countries, the competent national offices may recognize the protection provided that appropriate provision is made in any convention to which the member country is party and, of course, those appellations or indications must have been declared as such in their countries of origin.

Other Latin American countries provide for a relatively informal system, wherein the protection of geographical indications is envisaged in the laws on fair trade and consumer protection, the basis of which is the core international standard relating to protection against unfair competition (Article 10*bis* of the Paris Convention). Although in those countries, protection against unfair competition is developed in a different manner, they all have a common denominator: providing those who undertake commercial activities with an effective and appropriate resource against the illicit and fraudulent commercial practices of their competitors.

## CONCLUSION

According to López Benítez, appellations of origin are strongly entrenched on a territory and, as an external manifestation of trade, are designed to overcome borders and be projected overseas.

They reflect the link existing between a place and a product, the quality feature of which is connected to the geographical medium in which it is produced. Consumers are ever more demanding as regards the quality and origin of the different products they acquire, insofar as such features make them more reliable and attractive than the others available on the market. In turn, such a requirement increases producers' awareness of the need to protect their products against imitations.

Since the geographical appellation is a sign that has a specific function on the market, of protection not only for the consumer but also for the producer, and as a guarantee of quality inherent in the product which it covers, it is designed to orchestrate an effective protection policy for the geographical origin of products, since it will generate competitive advantages granting access to a special market.

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